

EMNETH | DESIGN

Terms & Conditions As Of January 2010

PLEASE READ THESE TERMS AND CONDITIONS. THESE DO NOT AFFECT YOUR STATUTORY RIGHTS UNDER UK LAW.

OUR SERVICE OBLIGATION

- Emneth Design will use all reasonable endeavours to ensure a prompt and continuing service but will not be liable for any loss of data resulting from delays, non-deliveries, or service interruptions caused by circumstances beyond the direct control of Emneth Design, or by errors or omissions of the customer. Emneth Design specifically excludes any condition of warranty as to the accuracy of third party information received through the service.
- Emneth Design will not be held liable for indirect, economic or consequential loss whatsoever.
- The liability of Emneth Design in contract or in connection with the supply of the service shall be limited in respect of any one event or a series of two or more connected events to the value of the domain name(s).
- Breach of "Terms & Conditions" by customers shall lead to termination of service with no entitlement to any refund.
- All fees paid are non-refundable and once registered, domain names cannot be changed in their name or extension without the costs due in the registration of a new name with the appropriate registry costs.

CONTRACT OF SERVICE

- The contract period shall be for the whole term of fees paid by the customer until the expiry of the valid domain name period usually two years from the date of registration. 14 days notice of cancellation must be received in writing, prior to the renewal date of a domain name or any other products.
- Emneth Design may elect to suspend or terminate the hosting service immediately on any default of payment by the customer.
- From time to time parts of the Emneth Design network may be taken off-line for repair or routine maintenance.
- Emneth Design will endeavour to give as much notice as possible but will not be held liable for any unscheduled downfall in the network due to extraneous conditions including but not limited to Act of God, inclement weather, act of telephone or governmental organizations or power failure.

IMPROPER USE AND LIABILITIES

- The customer shall acknowledge that he/she will only use the service for lawful purposes.
- The customer shall not use the service to receive or transmit material which is in violation of any law or regulation, which is obscene, threatening, menacing, offensive, defamatory, in breach of confidence, in breach of any intellectual property (including any trade mark or copyright). This extends to violations due to any spamming and or bulk e-mail activity for which Emneth Design can and will follow up in the courts of law.
- The customer shall take reasonable precaution to prevent the reception and transmission of viruses to Emneth Design and beyond and shall not attempt any intentional and malicious damage to the Emneth Design network or use the service to affect other computers.
- It is the customer's responsibility to keep all user names and passwords secure and not let third parties knowledge or access to them or to store them on any computer in plain text or in a format that is easily accessible.
- The customer will notify Emneth Design immediately by telephone or e-mail in any event of a username or password becoming known to a third party.
- The customer hereby indemnifies Emneth Design or its trading concerns against any action taken by a third party resulting from the customer's use of the Service.
- The customer shall notify Emneth Design of any action taken against them by a third party and will not hold Emneth Design liable for any resulting costs.
- The customer shall be responsible and liable for any costs to telephone companies by use of the service from their point of connection.
- The customer acknowledges that Emneth Design cannot exercise control over the content of information passed across the Internet and via the service.
- The customer agrees to conform to the acceptable policies of connecting to other networks or computers across the Internet



SUB-LEASE/RE-SELLING RESTRICTIONS

- The customer agrees not to re-assign, re-sell, sub-lease or transfer their account in any way, shape or form without the proper procedures being followed as required by the appropriate domain name registry. Contravention shall lead to immediate termination of the service to the customer by Emneth Design

SERVICE AGREEMENT

- The customer has the right to withdraw from or cancel their service agreement with Emneth Design within the first 72hrs of any new agreement in writing by recorded post only. Any domain transfers should be made in writing via e-mail only and no refunds will be due for domain registrations.
- Domain transfer requests - provided all details are correct and procedures followed by the customer - should be carried out by Emneth Design within 24hrs of receiving the customer's e-mail assuming also all outstanding invoices/balances have been settled by the customer with Emneth Design. In the event of a customer wishing to transfer the IPS tag relating to their domain name to another Internet Service Provider (ISP), a small transfer & administration charge will become payable (£24.99 UK Pounds) before the transfer can take place.

DOMAIN NAME AGREEMENT

- Emneth Design will register a domain to an individual and/or company on a per domain basis and the individual or company is granted exclusive use of this domain so long as all fees are paid and the balance of any accounts are kept up to date.
- By registering a name you agree to keep Emneth Design and its associated companies and its employees fully and effectively indemnified at all times against action brought about by any person, persons or company against you in using the name. You will assume liability and costs for any such action and release Emneth Design, its employees and its associated companies should any such situation arise.
- Any registered domain can be used for any legal, decent and honest use on the Internet and must not breach any UK laws. The name cannot be used for any immoral or pornographic use. The registrant agrees to have read and accepted the terms and conditions of the appropriate domain registry before ordering a domain name for registration by Emneth Design.
- Emneth Design shall not be liable for indirect, incidental or consequential damages, including loss of income, data, or information in any event by use of the Service.
- Emneth Design reserves the right not to register or assign any domain name for whatever reason.
- Emneth Design reserves the right to delete or suspend any domain name if payments have been defaulted upon and may at its discretion levy admin charges in re-establishing any domain or service thereof.
- Emneth Design reserves the right to vary the rate charged for domain name registrations and renewals and/or modify the services offered providing at least 28 days notice via its website of any cost or service changes.

GENERAL TERMS AND LAW

- Emneth Design reserves the right to do normal system housekeeping such as creating back-ups and do not accept responsibility for ensuring back up works though - your data security is your own problem.
- If Emneth Design suspects illegal activity, we may notify the authorities and reserve the right to do anything on the system which our lawyers advise us to do in the protection of the system.
- This agreement is governed by the laws of the United Kingdom, and you consent to the exclusive jurisdiction and venue of the King's Lynn County Courts in all disputes arising out of or relating to your use of the Emneth Design service.
- You acknowledge that no joint venture, partnership, employment, or agency relationship exists between you and Emneth Design as a result of your use of Emneth Design services. You agree not to hold yourself out as a representative, agent or employee of Emneth Design. You agree that Emneth Design will not be liable by reason of any representation, act or omission to act by you.
- Each respective Registry (i.e. Nominet, InterNic etc...) will notify the legal registrant of the disputed domain(s) of their position and liaise with all parties in dispute as determined by their respective terms and conditions of service provision. Emneth Design cannot enter into any direct involvement with the resolution of any dispute other than inform



and relay to its client any information supplied by the appropriate Registry as we have no ultimate control over of any domain assigned by any Registry.

REFUNDS

- Refunds are at the sole discretion of Emneth Design.

WEB HOSTING SERVICES ADDITIONAL T&C's

- You indicate acceptance of these terms and conditions of service by placing an order with Emneth Design. These terms and conditions will not be varied for individual customers.

DEFINITIONS

- In this Agreement the following words and expressions shall have the following meanings:
- "downtime" means any service interruption in the availability to visitors of the Website;
- "intellectual property rights" means patents, trademarks, design rights, applications for any of the foregoing, copyright, topography rights, database rights, rights in know-how, trade or business names and other similar rights or obligations, whether registrable or not in any country;
- "Emneth Design" is the trading name of Andrew Morrison t/a Emneth Design.
- "IP address" stands for Internet protocol address which is the numeric address for the server;
- "ISP" stands for Internet service provider;
- "server" means the computer server equipment operated by Emneth Design in connection with the provision of the services;
- "the services" means web hosting, domain name registration, e-mail and any other services or facilities provided by Emneth Design.
- "spam" means sending unsolicited and/or bulk emails;
- "virus" means a computer programme that copies itself or is copied to other storage media, including without limitation magnetic tape cassettes, memory chips, electronic cartridges, optical discs and magnetic discs, and destroys, alters or corrupts data, causes damage to the user's files or creates a nuisance or annoyance to the user and includes without limitation computer programs commonly referred to as "worms" or "trojan horses";
- "visitor" means a third party who has accessed the website;
- Product specifications and details may be found at www.emnethdesign.co.uk
- Words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders.
- The headings of the paragraphs of this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.
- INTRODUCTION
- The customer wishes to provide Emneth Design with data that will be hosted on Emneth Design's servers and made accessible via the Internet.
- Emneth Design provides web hosting services and has agreed to host the customer's data upon the following terms and conditions.
- DUTIES
- Emneth Design shall provide to the customer the services specified in their order subject to the following terms and conditions.
- The customer shall deliver to Emneth Design the website and the software used in the website which is owned by the customer, or licensed to him by a third party or Emneth Design ("the Customer Software), in a format specified by Emneth Design.
- CHARGES ,PAYMENT AND MONEY-BACK GUARANTEE
- Payment methods include PayPal, cash and cheques
- Emneth Design does not accept postal orders, or any other form of payment other than those outlined above.
- The charges are exempt of VAT.
- Emneth Design shall be entitled to charge an initial late payment fee of £10.00. Interest is also payable in respect of any outstanding sum due under this Agreement which shall accrue from the date when payment becomes due day by day



until the date of full outstanding payment is made. This interest is charged at an APR rate of 29.9%. If legal, court or collection costs arise from late payment then this will also incur interest at the above rate.

- Emneth Design does not provide credit facilities.
- From time to time Emneth Design may make enquiries on the customer's company, proprietor or directors of the customers company with credit reference agencies. These agencies may record that a search has been made and share this information with other businesses.
- Emneth Design does not provide a "money-back guarantee" on any products.
- Pro-rata refunds will not be issued for yearly services that are cancelled before the end of the year.
- Should your chosen payment method fail Emneth Design will attempt to settle your invoice using any other payment facilities available on your account.
- All services will renew until cancelled by the customer. Emneth Design emails the customers primary e-mail address prior to renewal of services, it is the customer's responsibility to cancel services prior to renewal as no refund can be made once renewal has occurred. Customers must notify us at least 72 hours before a service is renewed if they wish to cancel that service. The cancellation process must be fully completed by you before your account is cancelled.
- IP ADDRESSES
- Emneth Design shall maintain control and ownership of the IP address that is assigned to the customer as part of the Services and reserves the right in its sole discretion to change or remove any and all IP addresses.
- Where Emneth Design changes or removes any IP address it shall use its reasonable endeavours to avoid any disruption to the customer.
- SOFTWARE LICENSE AND RIGHTS
- If the customer requires use of software owned by or licensed to Emneth Design ("Emneth Design's software") in order to use the services, Emneth Design grants to the customer and its employees, agents and third party consultants and contractors, a royalty-free, world-wide, non-transferable, non-exclusive license to use Emneth Design software in object code form only, in accordance with the terms of this agreement. For the avoidance of doubt, this agreement does not transfer or grant to the customer any right, title, interest or intellectual property rights in Emneth Design software.
- In relation to Emneth Design's obligations under this agreement in connection with the provision of the services, the customer grants to Emneth Design a royalty-free, world-wide, non-exclusive license to use the customer software and all text, graphics, logos, photographs, images, moving images, sound, illustrations and other material and related documentation featured, displayed or used in or in relation to the website ("the content"). For the avoidance of doubt, this agreement does not transfer or grant to Emneth Design any right, title, interest or intellectual property rights in the customer software or the content.
- The customer undertakes that he will not himself or through any third party, sell, lease, license or sublicense Emneth Design software.
- Emneth Design may make such copies of the customer content as may be necessary to perform its obligations under this agreement, including backup copies of the content. Upon termination or expiration of this agreement, Emneth Design shall destroy all such copies of the content and other materials provided by the customer as and when requested by the customer.
- SERVICE LEVELS AND DATA BACKUP
- Emneth Design shall use its reasonable endeavours to make the server and the services available to the customer 100% of the time but because the services are provided by means of computer and telecommunications systems, Emneth Design makes no warranties or representations that the service will be uninterrupted or error-free and Emneth Design shall not, in any event, be liable for interruptions of service or downtime of the server.
- Emneth Design carries out data backups for use by Emneth Design in the event of systems failure. Emneth Design do not provide data restoration facilities for individual customers. Even though every effort is made to ensure data is backed up correctly Emneth Design accepts no responsibility for data loss or corruption.
- ACCEPTABLE USE POLICY
- The website and use of the Services may be used for lawful purposes only and the customer may not submit, publish or display any content that breaches any law, statute or regulation. In particular the customer agrees not to: use the services or the website in any way to send unsolicited commercial e-mail or "spam", or any similar abuse of the services; send e-mail or any type of electronic message with the intention or result of affecting the performance of any computer facilities; publish, post, distribute or disseminate defamatory, obscene, indecent or other unlawful material or information, or any material or information which infringes any intellectual property rights (for the avoidance of doubt this includes licensed software distributed as warez), via the services or on the website; threaten, abuse, disrupt or otherwise violate the rights (including rights of privacy and publicity) of others; engage in illegal or unlawful activities through the services or via the website; make available or upload files to the website or to the services that the



customer knows contain a virus, worm, trojan or corrupt data; or obtain or attempt to obtain access, through whatever means, to areas of Emneth Design's network or the services which are identified as restricted or confidential. This includes leaving your home directory whilst using SSH access to servers. operate or attempt to operate IRC bots or other permanent server processes.

- The Customer has full responsibility for the content of the Website. For the avoidance of doubt, Emneth Design is not obliged to monitor, and will have no liability for, the content of any communications transmitted by virtue of the Services.
- If the Customer fails to comply with the Acceptable Use Policy outlined in Clause 8.1 Emneth Design shall be entitled to withdraw the Services and terminate the Customer's account without notice.
- ALTERATIONS AND UPDATES
- All alterations and updates to the website shall be made by the Customer using the online account management facility, FTP access or SSH access where available. The Customer will be issued with a user name and password in order to access the account. The Customer must take all reasonable steps to maintain the confidentiality of this user name and password. If the Customer reasonably believes that this information has become known to any unauthorized person, the Customer agrees to immediately inform Emneth Design and the password will be changed.
- WARRANTIES
- The Customer warrants and represents to Emneth Design that Emneth Design's use of the Content or the Customer Software in accordance with this Agreement will not infringe the intellectual property rights of any third party and that the Customer has the authority to license the Content and the Customer Software to Emneth Design as set out in Clause 6.2.
- All conditions, terms, representations and warranties that are not expressly stated in this Agreement, whether oral or in writing or whether imposed by statute or operation of law or otherwise, including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose are hereby excluded. In particular and without prejudice to that generality, Emneth Design shall not be liable to the Customer as a result of any viruses introduced or passed on to the Customer.
- INDEMNITY
- The Customer agrees to indemnify and hold Emneth Design and its employees and agents harmless from and against all liabilities, legal fees, damages, losses, costs and other expenses in relation to any claims or actions brought against Emneth Design arising out of any breach by the Customer of the terms of this Agreement or other liabilities arising out of or relating to the Website.
- LIMITATION OF LIABILITY
- Nothing in these terms and conditions shall exclude or limit Emneth Design's liability for death or personal injury resulting from Emneth Design's negligence or that of its employees, agents or sub-contractors.
- The entire liability of Emneth Design to the Customer in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to the charges paid for the Services under this Agreement in respect of which the breach has arisen.
- In no event shall Emneth Design be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or Emneth Design had been made aware of the possibility of the Customer incurring such a loss.
- TERM AND TERMINATION
- This Agreement will become effective on the date the service is ordered and shall continue until terminated by either party in writing of its intention to terminate the Agreement.
- Emneth Design shall have the right to terminate this Agreement with immediate effect by notice in writing to the Customer if the Customer fails to make any payment when it becomes due.
- Either party may terminate this Agreement forthwith by notice in writing to the other if: the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within a reasonable time of being given written notice from the other party to do so; or the other party commits a material breach of this Agreement which cannot be remedied under any circumstances; or the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect; or the other party ceases to carry on its business or substantially the whole of its business; or the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.
- Any rights to terminate this Agreement shall be without prejudice to any other accrued rights and liabilities of the parties arising in any way out of this Agreement as at the date of termination.
- On termination all data held in the customer's account will be deleted.



- **ASSIGNMENT**
- Emneth Design may assign or otherwise transfer this Agreement at any time.
- The Customer may not assign or otherwise transfer this Agreement or any part of it without Emneth Design's prior written consent.
- **FORCE MAJEURE**
- Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, the act or omission of any Internet Service Provider, or the delay or failure in manufacture, production, or supply by third parties of equipment or services, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.
- **SEVERANCE**
- If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.
- **NOTICES**
- Any notice to be given by either party to the other may be sent by either e-mail, fax or recorded delivery to the address of the other party as appearing in this Agreement or such other address as such party may from time to time have communicated to the other in writing, and if sent by e-mail shall unless the contrary is proved be deemed to be received on the day it was sent or if sent by fax shall be deemed to be served on receipt of an error free transmission report, or if sent by recorded delivery shall be deemed to be served 2 days following the date of posting.
- **ENTIRE AGREEMENT**
- This Agreement contains the entire Agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. This Agreement may be updated without notice.
- **GOVERNING LAW AND JURISDICTION**
- This Agreement shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.
- **DOMAIN NAME REGISTRATION**
- Domain names are not deemed to be successfully registered until they appear in the relevant whois database of the top level domain name registrar. In the event that a domain name is unavailable when we attempt to register it Emneth Design will provide a full refund for that domain name.
 - Please return to the main terms and conditions area of this website to view terms and conditions for individual domain name registrars.
- **SCRIPTING**
- Emneth Design are not responsible for customer programming issues other than ensuring that programming languages such as Perl, PHP and ASP are installed and functioning on the web hosting system.
- **PRIVACY**
- To protect your privacy we will not distribute your details to third parties, unless required to do so by law.
- **DATA TRANSFER**
- Web hosting accounts include a certain amount of data transfer, if you exceed this amount in any one month your account will be deactivated until you have upgraded to an account that has more data transfer included.
- Web hosting accounts are prohibited from hosting file distribution websites (including but not limited to music, video and software), adult content orientated websites, hosting banners, graphics or cgi scripts for other websites, storing pages, files or data as a repository for other websites or personal computers, giving away web space under a domain, sub domain or directory.
- **SERVER USAGE**
- Should your account use more than 5% of the servers processing power and as a result have a detrimental effect on other customers we will discuss with you alternative solutions for your hosting requirements.
- **WEB SPACE USAGE**
- Unlimited web space is available for genuine web site content; content must be linked into web pages. Customers are prohibited from using the server as a file/backup repository. Customers are expected to employ good housekeeping when maintaining their account.

